



## Understanding Joint Venture and Mentor-Protégé Agreement Eligibility

### Issue:

This brief explains the criteria that make a joint venture eligible for verification and inclusion in the VetBiz Vendor Information Pages (VIP) database.

The application process for the verification of a joint venture is the same application process for the verification of any other Service-Disabled Veteran-Owned Small Business (SDVOSB) or Veteran-Owned Small Business (VOSB).

However, there are essential requirements that must be present for a joint venture to be verified as a SDVOSB or VOSB.

At the outset, a joint venture may be organized as a partnership or any other separate legal entity. Respective to the Veterans First Contracting Program, joint Ventures may be either a SDVOSB or VOSB. However, in accordance with 38 CFR Part 74, at least one SDVOSB or VOSB joint venture partner must be verified and designated as the managing venturer. An employee of the managing venturer must serve as the project manager.

In general, each joint venture partner must be a small business in the NAICS Codes identified on the applicant's VetBiz VIP application profile. In addition, the 12 provisions identified in 13 CFR § 125.18(b)(2) must be contained in the joint venture agreement.

An exception to the requirement that all partners to the joint venture must be small may occur when there is a mentor-protégé agreement approved by the Small Business Administration (SBA) and the mentor and protégé are the joint venture partners. CVE will not require that the mentor qualify individually as a small business under its selected NAICS

Codes for the purpose of verification, but the mentor-protégé agreement must otherwise comply with the control requirements of 38 CFR Part 74.

(For purposes of this brief, Veteran applies equally to Service-Disabled Veterans; applicant refers to the business entity applying for verification; and participant refers to a business entity that has already been verified.)

(SDVO SBC as used in 13 CFR § 125.18(b)(2) means a Service Disabled Veteran Owned Small Business Concern. For purposes of verification, CVE applies 13 CFR § 125.18(b) to both SDVOSB and VOSB).

### The Regulations:

**38 CFR § 74.1** provides that a “[j]oint venture is an association of two or more small business concerns to engage in and carry out a single, specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. For VA contracts, a joint venture must be in the form of a separate legal entity.”

**38 CFR § 74.1** provides that “...CVE applies the small business concern definition established by 48 CFR 2.101.”

**48 CFR § 2.101** provides that a “[s]mall business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR Part 121 (see 19.102). Such a concern is ‘not dominant in its field of operation’ when it does not exercise

a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration must be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity (see 15 U.S.C. 632)."

**38 CFR § 74.3** provides that "[a]n applicant or participant must be at least 51 percent unconditionally and directly owned by one or more veterans or service-disabled veterans."

**38 CFR § 74.3(d)(2)** provides that "[o]ne or more veterans or service-disabled veterans must be entitled to receive...[a]t least 51 percent of the net profits earned by a joint venture in which the applicant or participant is the lead concern..."

**38 CFR § 74.4(c)(1)** provides that "[a]n applicant or participant must be controlled by one or more veterans or service-disabled veterans who possess requisite management capabilities. Owners need not work full-time but must show sustained and significant time invested in the business. An owner engaged in employment or management outside the applicant concern must submit a written statement supplemental to the applicant which demonstrates that such activities will not have a significant impact on the owner's ability to manage and control the applicant concern. Applications from joint ventures are exempt from the requirement to submit a supplemental written statement."

**38 CFR § 74.4(e)** provides "[i]n the case of a limited liability company, one or more veterans or service-disabled veterans must serve as management members, with control over all decisions of the limited liability company."

**13 C.F.R. § 121.103(h)(3)(iii)** provides, in part, that "[t]wo firms approved by [the] SBA to be a

mentor and protégé under § 124.520...may joint venture as a small business for any Federal government prime contract or subcontract, provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement and...has not reached the dollar limit set forth in § 124.519 of these regulations..."

**13 C.F.R. § 125.18(b)** provides, in part, that "[a]n SDVO SBC may enter into a joint venture agreement with one or more other SBCs or its SBA-approved mentor for the purpose of performing an SDVO contract.

*(1) Size of concerns to an SDVO SBC joint venture.*

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(ii) A joint venture between a protégé firm that qualifies as an SDVO SBC and its SBA-approved mentor (see §§ 125.9 and 124.520 of this chapter) will be deemed small provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the SDVO procurement or sale."

**13 CFR § 125.18(b)(2)** provides that "...[e]very joint venture agreement...must contain" the following 12 provisions:

(i)

1. The joint venture agreement must contain a provision "[s]etting forth the purpose of the joint venture..." 13 CFR § 125.18(b)(2)(i)

2. The joint venture agreement must contain a provision "[d]esignating an SDVO SBC as the managing venturer of the joint venture, and an employee of the managing venture as the project manager responsible for performance of the contract..." 13 CFR § 125.18(b)(2)(ii)

3. The joint venture agreement must contain a provision “[s]tating that with respect to a separate legal entity joint venture, the SDVO SBC must own at least 51% of the joint venture entity...” 13 CFR § 125.18(b)(2)(iii)

4. The joint venture agreement must contain a provision “[s]tating that the SDVO SBC must receive profits from the joint venture...commensurate with their ownership interests in the joint venture...” 13 CFR § 125.18(b)(2)(iv)

5. The joint venture agreement must contain a provision “[p]roviding for the establishment and administration of a special bank account in the name of the joint venture. This account must require the signature of all parties to the joint venture or designees for withdrawal purposes. All payments due the joint venture for performance on an SDVO contract will be deposited in the special account; all expenses incurred under the contract will be paid from the account as well...” 13 CFR § 125.18(b)(2)(v)

6. The joint venture agreement must contain provisions “[i]temizing all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value of each, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated major equipment, facilities, and other resources to be furnished by each party to the joint venture, without a detailed schedule of cost or value of each, or in the alternative, specify how the parties to the joint venture will furnish such

resources to the joint venture once a definite scope of work is made publicly available...” 13 CFR § 125.18(b)(2)(vi)

7. The joint venture agreement must contain provisions “[s]pecifying the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, including ways that the parties to the joint venture will ensure that the joint venture and the SDVO small business partner(s) to the joint venture will meet the performance of work requirements set forth in paragraph (b)(3) of this section, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, not including the ways that the parties to the joint venture will ensure that the joint venture and the SDVO small business partner(s) to the joint venture will meet the performance of work requirements set forth in paragraph (d) of this section, or in the alternative, specify how the parties to the joint venture will define such responsibilities once a definite scope of work is made publicly available...” 13 CFR § 125.18(b)(2)(vii)

8. The joint venture agreement must contain a provision “[o]bligating all parties to the joint venture to ensure performance of the SDVO contract and to complete performance despite the withdrawal of any member....” 13 CFR § 125.18(b)(2)(viii)

9. The joint venture agreement must contain a provision “[d]esignating that

accounting and other administrative records relating to the joint venture be kept in the office of the SDVO SBC managing venturer, unless approval to keep them elsewhere is granted by the District Director or his/her designee upon written request..." 13 CFR § 125.18(b)(2)(ix)

10. The joint venture agreement must contain a provision "[r]equiring that the final original records be retained by the SDVO SBC managing venture upon completion of the SDVO contract performed by the joint venture..." 13 CFR § 125.18(b)(2)(x)

11. The joint venture agreement must contain a provision "[s]tating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the joint venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the joint venture..." 13 CFR § 125.18(b)(2)(xi)

12. The joint venture agreement must contain a provision "[s]tating that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA no later than 90 days after completion of the contract." 13 CFR § 125.18(b)(2)(xii)

**13 C.F.R. § 125.9(d)(1)** provides, in part, that "[a] protégé and mentor may joint venture as a small business for any government prime contract or subcontract, provided the protégé qualifies as small for the procurement. Such a joint venture may seek any type of small business contract (i.e., small business set-aside, 8(a), HUBZone, SDVO, or WOSB) for which the protégé firm qualifies (e.g., a protégé firm that qualifies as a WOSB could seek a WOSB set-aside as a joint venture with its SBA-approved mentor)."

**48 CFR § 819.7003(c)(4)** provides that "[a] joint venture may be considered an SDVOSB or VOSB concern if...[t]he joint venture meets the requirements of 13 CFR 125.15(b), modified to include veteran-owned small businesses where this CFR section refers to SDVOSB concerns."

### What This Means:

- A joint venture must be in the form of a separate legal entity. 13 CFR § 125.18(b)(2)(iii)
- A joint venture may either be a SDVOSB or VOSB.
- In every joint venture, at least one of the joint venture partners must be a verified in accordance with 38 CFR Part 74.
- A joint venture may be in the form of a partnership that operates under a partnership agreement that satisfies the requirements of 13 CFR § 125.18(b)(2).
- A joint venture must be separately verified as either a SDVOSB or VOSB.
- All partners to the joint venture must qualify as a Small Business Concern per the SBA guidelines except if the joint venture is an SBA-approved Mentor-Protégé; if so, see 13 CFR 125.18(b)(1)(ii) for unique size guidelines.
- CVE will consider verification eligibility of joint ventures comprised of a SDVOSB/VOSB protégé and an other-than-small mentor under an SBA-approved mentor-protégé agreement. A CVE-verified concern may establish an SBA all small mentor-protégé agreement with a concern that is other than small and not CVE-verified, and then establish a CVE-verified joint venture with that same concern.

- It is not sufficient for a joint venture to be comprised of firms that have an SBA-approved mentor-protégé agreement. The joint venture must then apply for and receive verified status from CVE.
- The contents of the mentor protégé agreement will not be examined for affiliation, but will be examined to determine whether the contents of the agreement conforms to the control requirement of 38 CFR Part 74.
- A joint venture must be at least 51 percent owned by one or more SDVOSB(s) or VOSB(s).
- A SDVOSB or VOSB may enter into a joint venture agreement with one or more other small business concern(s) for the purpose of performing a Veteran set-aside contract.
- If the joint venture is organized as an LLC, the SDVOSB/VOSB joint venturer must control all decisions of the LLC in order to meet the requirements of 38 CFR 74.4(e).
- 13 CFR §§ 125.18(b)(2) is applicable to the verification of both SDVOSBs and VOSBs.
- Joint ventures that apply for verification are not required to provide a supplemental written statement regarding the business activities of the managing venturer in accordance with 38 CFR § 74.4(c)(1).
- The SDVOSB or VOSB must receive a distribution of profits commensurate with its ownership interests in the joint venture.
- A verified SDVOSB or VOSB must be the managing venturer of the applicant.
- An employee of the verified SDVOSB or VOSB must serve as the project manager for the managing venturer.
- All joint venture agreements must contain the provisions stated in 13 CFR § 125.18(b)(2).
- If the applicant, in accordance with 13 CFR § 125.18(b)(2)(vi), asserts that it is impractical to provide a detailed schedule of cost or value pertaining to the itemization of all major equipment, facilities, and other resources, the applicant must provide a written statement to CVE supporting the assertion.
- If the applicant, in accordance with 13 CFR § 125.18(b)(2)(vii), asserts that it is impractical to provide the manner by which the small business partner(s) to the joint venture will meet the performance of work requirements set forth in paragraph (b)(3) of this section, the applicant must provide a written statement to CVE supporting the assertion.

#### **Excerpts from Verification Denial Letters:**

- “In order for a joint venture to qualify as a SDVOSB, the management and control of the joint venture must be handled by the SDVOSB firm. In this instance, your business, Example, LLC, is a verified SDVOSB, but the supplied documentation for the joint venture shows that the SDVOSB does not serve as the managing venturer. Therefore, CVE is unable to reasonably conclude that the verification requirements have been satisfied.”
- “Example JV, LLC supplied a joint venture agreement. CVE found in

Example JV, LLC's Articles that, '[t]he business and affairs of the Venture shall be managed by an executive committee composed of two persons who shall be responsible for the management of the venture (the 'Executive Committee').' This executive committee is made up of two members, one from each business comprising the joint venture. According to the concern's joint venture agreement, unanimous consent of the members is required for the concern to transact business. As only one of the two representatives is from the verified SDVOSB, CVE is unable to reasonably conclude that a SDVOSB is the managing venturer of Example JV, LLC in accordance with 13 CFR § 125.18(b)(2)."

- "In order for a joint venture to be included in the VetBiz VIP database as a verified SDVOSB, one of the businesses forming the joint venture must be a verified SDVOSB. Example JV, LLC applied for SDVOSB status; however, Veteran Company, LLC, the managing venturer, was denied inclusion in the VIP database as it failed to meet the eligibility requirements of 38 CFR Part 74. Because neither of the businesses that form the joint venture are verified as a SDVOSB, CVE is unable to conclude that Example JV, LLC meets the requirements of the regulations."

#### **FOR INFORMATIONAL PURPOSES ONLY**

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#### **VA Office of Small and Disadvantaged Business Utilization**

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